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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

WILLIE N. MOON, and
ADNETTE M. GUNNELS-MOON
Debtors.

Adv. No.: 19-01090-MKN

Case No.: 13-12466-MKN

Chapter 13

RUSHMORE LOAN MANAGEMENT
SERVICES, LLC,

Plaintiff,

vs.

WILLIE N. MOON, and
ADNETTE M. GUNNELS-MOON

Defendants.

**REPLY TO OPPOSITION TO
MOTION TO DISMISS
COMPLAINT AND OPPOSITION
TO SUMMARY JUDGMENT**

Date: December 4, 2019
Time: 9:30 a.m.

COMES NOW, Defendants, Willie N. Moon and Adnette M. Gunnels-Moon, jointly ("the Moons"), in Reply to Rushmore Loan Management Services, LLC ("Rushmore"), Opposition to Motion to Dismiss Complaint and [Opposition to Summary Judgment].

I**Argument****A. Moons Motion to Re-open was Limited.**

After the Moons case was re-opened and the their motion for contempt filed, Rushmore, filed a two paragraph response that provided no substantive objection (Dkt. #90). Then, Rushmore also chose not to file a pretrial brief in the evidentiary hearing! Instead, on September 4, 2019, it chose to file an adversary to collaterally attack orders of this court from between three and five years ago. However, Rushmore's adversary is not a proper vehicle for the relief it seeks.

In fact, the Moons motion to reopen was *limited* to their motion for contempt (Bk Dkt.#81, p.2, ln.1-2). It was *not* reopened for any other purpose. Thus, Rushmore's complaint is improper, as it did not even have court permission to file it. Further, Rushmore's opposition to the Moons motion to dismiss its adversary, struggles to create a legitimate cause of action. It does this in a couple of ways. First, by coming up with causes of action that were *never* mentioned in its first complaint. Then, adding *facts* that were not in its initial complaint and attempting to hook these up to its new causes of action. But, as explained below, even engaging in a form of literary gymnastics fails to create a valid complaint for Rushmore.

B. Rushmore's new causes of action do not save it.

Rushmore's opposition, now alleges that six provisions of Federal Rule of Bankruptcy Procedure ("FRBP") apply, despite never invoking, stating or addressing any of these in its complaint. These include: FRBP 7001(1), (2), (4), (5), (7) and (9) (Opp., p.9-10). However, a look at each reveals just the opposite.

To start with, Rule 7001(1) applies to a proceeding to recover money or

1 property. However, it is not for third parties to pursue a debtor three years after their
2 discharge for an alleged “property interest” that was avoided five years ago (Opp. p.9,
3 ln.27). Thus, it’s a stretch for this section to apply.

4 Also, Rule 7001(2) does not apply, Rule 7001(2) involves proceedings to
5 “determine the validity, priority or extent of a lien or other interest in property”. Here,
6 no one questioned the validity of Rushmore’s lien. Instead, the motion to avoid
7 involved the value of its lien. And, as already mentioned, that was already determined
8 by this Court *five* years ago. Besides, since their motion to avoid its lien was filled
9 under Rule 3012, per *In re Zimmer*, 313 F.3d 1220, 1227 (9th Cir. 2002), Section
10 7001(2) could not apply (see BK Dkt. #29, p.3, ln.19). Instead, it appears that this
11 complaint attempts to undue that motion and order improperly. However, it is not a
12 correct procedure to “strike its order avoiding the second deed of trust-because it is
13 void”, by this cause of action and in an adversary setting (Comp. p.6, ln.13-14).
14

15 Then, Rushmore cites to Rule 7001(4) in an attempt to “object(s)” (revoke?) to
16 the Moons discharge (Opp. p. 10, ln.19-21). However, despite its complaint never
17 mentioning this, a chapter 13 discharge can only be done within one year of it being
18 entered. 11 USC §1328(e). And only for fraud. Here, the Moons discharge was
19 September 28, 2016. Thus, the clock ran on September 28, 2017. So, this rule would
20 also not apply.
21

22 Next, Rushmore looks to Rule 7001(5) to “challenge” the confirmation order
23 (Opp. p.10, ln. 22). However, despite its complaint never mentioning this, a
24 confirmation order can only be revoked within 180 days of being entered. 11 USC
25 §1330(a). Here, since confirmation occurred on April 7, 2014, the last day to revoke
26 that was October 7, 2014. Curiously, Rushmore’s opposition later admits “no relief is
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1 available under the chapter 13 plan” (Opp. p.10, ln.26). Thus, this cause of action can
2 also be eliminated.

3 Rushmore adds a Rule 7001(7) claim, which is “a proceeding to obtain an
4 injunction or other equitable relief.” However, it fails to state what is being enjoined
5 or any type of equitable relief it seeks. So, again this cause of action fails.

6 Finally, Rushmore lists Rule 7001(9). This applies, when a declaratory judgment
7 is sought relating to any other Rule 7001 subsection. Since, none of the other
8 subsections apply, Rule 7001(9) can not stand on its own. Besides, none of the above
9 causes are part of its complaint. Instead, it seeks to have this court “strike” various
10 orders (Comp. p.6, ln.5, 7 and 13).

11 In the end, by asking for leave to amend, Rushmore makes an indirect
12 admission that its complaint is sorely lacking. But, because none of the Rule 7001
13 subsections were ever invoked in its complaint, either directly or indirectly, there is no
14 reason to allow Rushmore’s leave to amend. Therefore, dismissal with prejudice is
15 appropriate.
16

17 **C. Opposition to Summary Judgment**

18 Rushmore included a motion for summary judgment in its opposition. Later on,
19 it sent notice that January 7, 2020 is the time for its summary judgment motion (Dkt
20 #20). The Moons will respond to and oppose that request at the appropriate time.
21 However, and not surprisingly, Rushmore’s complaint and opposition avoid
22 mentioning it had *actual* knowledge of the Moons chapter 13 by December 20, 2014.
23 And, if it had bothered to look on PACER, which it admittedly has access to, Rushmore
24 would have had ample time to object to the chapter 13 Trustees Chapter 13 Final
25 Account and Report (Dkt. #64), which was not filed with the Court until eighteen (18)
26
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1 months later. Rushmore could have also objected to the Moons discharge as it had not
2 been entered yet. Instead, Rushmore chose to lay-in-wait, hoping property values
3 would eventually increase.

4
5 **III**
Conclusion

6 Rushmore's adversary should be dismissed. Its complaint has no legitimate
7 cause of action. Thus, it should not be given leave to amend as the adversary is not
8 salvageable.

9
10 DATED this 27th day of November 2019.

11
12 RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I hereby certify that the 27th day of November, 2019, I caused the above and foregoing **REPLY TO OPPOSITION TO MOTION TO DISMISS COMPLAINT AND OPPOSITION TO SUMMARY JUDGMENT** to be sent by electronic notice through the Court's ECF program and or depositing same in the United States Mail, first class, postage prepaid, in a securely sealed envelope and addressed to the last known address of the following:

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